

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Annual Compliance Report, 2014

Docket No. ACR2014

Reply Comments of Stamps.com

(February 13, 2015)

Stamps.com Inc., by counsel, hereby submits its reply comments per Commission Order No. 2313 (Dec. 31, 2014). These reply comments are directed to the February 2, 2015 initial comments of the Greeting Card Association and the American Postal Workers Union concerning the one-cent price differential between metered and stamped mail.

Reply to Greeting Card Association Comments

The Greeting Card Association lodges a number of contentions as to why the one-cent price differential between metered and stamped mail does not comply with 39 U.S.C. Chapter 36.

Concerned about a possible effect on “household mailers,” but not, apparently, on possible effects on a range of other First-Class mailers (including presort mailers), GCA argues that the differential is not “just and reasonable” per § 3622(b)(8). (GCA Comments, pp. 2, 4-5.) But all rate changes have distributed effects and each of the

nine statutory rate-setting objectives “shall be applied in conjunction with the others.” 39 § 3622(b). Even in isolation, the “just and reasonable” objective does not require locking in the status quo or barring normal rate-design considerations. Section 3622(b)(8) itself counsels that “the objective under this paragraph shall *not* be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.” (Emphasis added.)

In any case, the one-cent differential is just and reasonable, as it: (a) recognizes different mail preparation and mail flows; (b) is similar in form to other rate differences (e.g., the nonstandard surcharge, the additional-ounce rate, and the Business Reply rates); (c) sends a signal to mailers that leads them to a more secure and more efficient mail stream; (d) gives a discount to mailers who have invested in a better mail stream; (e) benefits all mail users by encouraging more mail to be metered; and (f) complies with general notions of economic efficiency. These rationales are more than sufficient to meet the broad “just and reasonable” rate-setting objective.

While GCA complains the meter discount is a detriment to households, GCA itself recognizes that computer-using households *can* obtain the one-cent meter discount. (GCA Comments, p. 2, fn. 3.) And many of Stamps.com’s customers *are* household users: 37% of Stamps.com’s currently-active customers identify themselves as “personal” users. These personal users, as well as business customers, are able to print postage on greeting card envelopes to obtain the one-cent meter postage differential, and we believe this is a common usage. Stamps.com’s software readily accommodates custom-size envelopes, making it easy to use PC Postage to obtain the

meter differential on all types and sizes of greeting card envelopes, including oversize envelopes and pieces weighing more than one ounce. As an added benefit to the mailing system, these users are now one step closer to taking advantage of PC Postage's CASS certified software, which verifies and cleanses the address and prints out an Intelligent Mail barcode on the envelope.

GCA is further critical of the discount based on the "uncertain size of the target market." GCA contends that since postage meters have long been actively promoted by their manufacturers, there are unlikely to be a significant number of converts from stamps to metering. (GCA Comments, p. 3.) But meter manufacturers were never before able to promote meters based on a rate differential, so the target market cannot be assumed to be fully plumbed. Moreover, uncertainty as to the potential market in a case like this is not uncommon. And the discount also induces existing meter users to slow the departure of their mail from the postal system and generate new mail volume. Indeed, as demonstrated by the statistics cited by GCA (GCA Comments, pp. 5-6), metered mail is declining more rapidly than stamped mail, so it is arguably appropriate to take action to stave off or reduce that trend.

GCA expresses concern the discount could be providing a "reward" to meter users for doing what they did before, and presumably would continue to do without the discount. (GCA Comments, pp. 3-4.) Hundreds of "discounts" exist at this point, most created since 1970, in a period during which the Postal Service was expected to become more businesslike. All of them have involved either a rate decline or a smaller-than-otherwise rate increase. Many mailers have had to make adjustments to use the

discounts, and many have not. The latter group could think of themselves as having received a reward, but it would be better to think of it as having received recognition.

GCA also argues the one-cent differential fails to comply with 39 U.S.C. § 3622(b)(8), because it constitutes “price discrimination” against household mailers. (GCA Comments, pp. 4-7.) But § 3622(b)(8) does not mention or proscribe price discrimination, which is not frowned upon unless it is undue. Indeed, § 3622(b)(8) expressly notes that “changes of unequal magnitude within, between, or among classes of mail” is not prohibited. Here, the price difference is justified as an incentive to encourage the adoption of metered mail by small businesses and to grow their mail volume in the long run. The price difference is also justified by the lower overall cost associated with metered mail as compared to stamped mail. In any case, the price differential is not discriminating against households. Many of Stamps.com’s customers are personal users, so the discount is benefitting household mailers.

GCA contends that the data show the price differential is not creating any detectable increase in mail eligible to use the discount. (GCA Comments, p. 6.) The one-cent price differential has only been in effect for a relatively short time and we do not yet have data for a full fiscal year. It is therefore difficult to draw conclusions, particularly considering that the meter discount is a type of discount that may require additional promotion and mailer understanding to take full effect. GCA itself notes, billing determinant data for FY 2014 suggests, “at first glance,” that the incentive *is* working. (GCA Comments, pp. 9-11). GCA takes great pains, and many leaps, to show

that this “first glance” view is wrong, but the same machinations could just as easily be applied to the RPW data that GCA contends is supportive of its position.

We believe it is too early, and the data are too limited, to draw conclusions about the effect of the one-cent differential. We also disagree with GCA’s conclusions, based on the customer data we cited in Stamps.com’s Initial Comments. As noted there, survey data from Stamps.com users show that the discount is working as intended. The availability of the discount was “Somewhat important” or “Very important” to 64 percent of new Stamps.com users who became customers after the discount was implemented. And over a quarter of these customers say that the discount has encouraged them to mail more pieces. (Stamps.com Initial Comments, pp. 3-4.) These are positive signs that the discount is having an effect and is accomplishing its purpose.

Moreover, the one-cent discount for metered mail is well-deserved for another reason. The indirect and direct cost of allowing payment by postage stamp, and the cost of processing such mail, has always been understood to be much greater than the costs associated with metered mail. GSA’s underlying premise neglects to take this reality into account, and would have the PRC believe that the price differential somehow results in stamped mail subsidizing the costs associated with metered mail. Even with the one-cent differential, GCA has not, and cannot, demonstrate that stamp users are subsidizing meter users.

GCA contends the one-cent discount fails to comply with 39 U.S.C. § 3622(b)(1) (“To maximize incentives to reduce costs and increase efficiency”) and § 3622(b)(5) (“To assure adequate revenues, including retained earnings, to maintain financial

stability”). (GCA Comments, pp. 7-9.) Neither of these contentions is substantiated. As to (b)(1), the discount incentivizes greater use of metered mail versus stamped mail, which leads to reduced costs and greater efficiency. Even GCA concedes that changing from stamps to meter “might substitute a lower level of unit processing cost.” (GCA Comments, pp. 7-8.) GCA’s conclusion that this has not occurred is speculation based on less than one year’s data and is contrary to what Stamps.com’s new customers have reported.

As to § 3622(b)(5), the discount complies with the goal of assuring adequate revenues. Citing a Postal Service elasticity of -0.140, which is an own-price elasticity without cross effects, GCA argues that the quantity effect will be smaller than the price effect, and thus that the discount will cause the Postal Service’s revenues to decline, implicating paragraph (b)(5) (“adequate revenue”). (GCA Comments, pp. 8-9.) But a reduction in revenue would occur only if all other prices remained constant, which they do not under a price cap. GCA’s argument is thus based on a false assumption.

GCA’s argument that the cross-elasticities are zero is also inconsistent with Stamps.com’s actual experience and with the apparent rise in the proportion of meter mail shown in the billing determinants. As support for its assumption that the cross-elasticities are zero, and thus that there is no movement between categories, GCA alludes to the time when presort discounts were new for then third-class mail, saying that “presorting ... was already well-known and in use.” (GCA Comments, pp. 3-4.) GCA is correct that presorting was required before the discounts arrived, but history shows that presorting increased immensely *after* the discounts became a reality. The

fact is that mailers respond to discounts. Given adequate time, and an appropriate discount, mailers will similarly respond to the meter discount.

Reply to APWU Comments

The APWU contends that two U.S. Court of Appeals decisions¹ involving the undue discrimination of GameFly mailings prohibit the Postal Service from offering a price differential for metered mail that is not based on worksharing grounds. (APWU Comments, pp. 2, 8-11.) APWU has misread and misapplied the GameFly opinions. There is no principle or law that requires all rate differences be based on worksharing grounds, and the GameFly decisions are neither applicable to the one-cent meter differential nor can be interpreted to preclude them.

APWU contends that “the prevailing justification [presumably for the meter rate] in past years was simply that the discount benefitted business users.” (APWU Comments, pp. 8-9.) But this statement conflicts with the finding in PRC Order No. 1890 (at p. 50) that, with respect to the meter discount, “the Postal Service has satisfied the requirements of 39 C.F.R. § 3010.12(b)(7).” These requirements have 6 parts and 21 subparts, and are extensive. Regardless of the proper reading of that Order, APWU also takes the position that the PRC’s reasoning is no longer defensible after the GameFly decisions, which supposedly held that “similarly conclusory excuses were not

¹ *GameFly, Inc. v. Postal Regulatory Commission*, 704 F.3d 145 (D.C. Cir. 2013) (“*GameFly I*”); *U.S. Postal Service v. Postal Regulatory Commission*, 747 F.3d 906 (D.C. Cir. 2014) (“*GameFly II*”).

adequate to justify differential treatment among users.” (APWU Comments, p. 9.) This reading of the GameFly decisions is erroneous.

To support its reading, APWU calls on: (a) the uniformity requirement of § 404(c), commonly interpreted to require that First-Class rates may not be zoned,² and (b) § 403(c) stating that “the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails.” APWU fails to note that the “specifically authorized” authority for rate-setting is contained in chapter 36, under which the Postal Service has developed thousands of rates based on pieces, shapes, weight, zones, and other factors. As noted above, the Commission found in Order No. 1890 that the meter rate is consistent with Rule 3010, which implemented chapter 36.

APWU further argues that rates based on “operational savings,” which we take to be no different from cost differences (which are the basis for many of the rate differences developed under chapter 36), are discriminatory under GameFly unless they are worksharing under § 3622(e). (APWU Comments, pp. 10-11.) APWU says this despite the fact that the court’s opinion in GameFly does not mention worksharing once, nor was worksharing an issue in the appeal.

APWU also reasons that the meter rate matter is “remarkably similar” to the Commission’s justification for its first GameFly remedy (Order No. 718 at 115), which the court vacated because it left in place residual discrimination without explanation.

² To our knowledge, the meaning of the uniformity requirement in § 404(c) has not been tested in the courts. In addition to the possibility that zoning of the basic First-Class rate may be prohibited, it could mean that the rate does not depend on the geographic location at which the piece is entered into the Postal Service.

APWU misreads the GameFly opinion. It was the Commission that found discrimination and it was the Commission that formulated the first remedy. The discrimination involved differences in handling, with rate implications.³ The remedy involved differences in rates. The court found that the Commission's order left discrimination in place without reasonable explanation. The discrimination left in place was in handling. It was not that the rates were discriminatory per se, it was that they did not remedy the effects of the discrimination in handling. The court did not constrain the normal rate-setting process of chapter 36.⁴ The implication seen by APWU does not exist.

Separately, and similar to GCA's contention, the APWU also argues that the one-cent meter discount represents a "policy to reward business customers over residential customers." (APWU Comments, p. 11.) But this is neither the purpose for the discount nor the result, and none of the sections cited by the APWU prohibit the Postal Service from offering a pricing discount for metered mail.

We thank the Commission for this opportunity to provide our reply comments.

³ In *GameFly II*, the court explained: "Because of the disparate treatment, GameFly was forced to use USPS's more expensive first class "flat" mailer service." 747 F.3d 906, 907 (internal quotes in original).

⁴ In *GameFly II*, the court explained: "As an initial matter, section 3622 on its face applies only to the Commission's fundamental statutory duty "by regulation [to] *establish* ... a modern *system* for regulating rates and classes for market-dominant products ... to whatever extent the Commission was bound to consider the statutory factors ... it reasonably concluded that those "generally applicable ratemaking policies" were outweighed by the need to afford the complete relief we ordered in *GameFly I*." 747 F.3d 906, 913 (internal quotes, emphasis, and brackets in original). In the case of the meter rate, no § 403(c) discrimination exists to be "outweighed."

Respectfully submitted,

s/ David P. Hendel

David P. Hendel
HUSCH BLACKWELL LLP
750 17th St. N.W., Suite 900
Washington, D.C. 20006-4656
Direct: 202.378.2356
Fax: 202.378.2318
david.hendel@huschblackwell.com

Counsel for Stamps.com